

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

|            |   |                  |
|------------|---|------------------|
| In re:     | ) |                  |
|            | ) |                  |
| NOVELL,    | ) |                  |
|            | ) |                  |
|            | ) |                  |
| Plaintiff, | ) |                  |
|            | ) |                  |
| vs.        | ) | Case No.         |
|            | ) | 2:04-CV-01045JFM |
| MICROSOFT, | ) |                  |
|            | ) |                  |
| Defendant. | ) |                  |
|            | ) |                  |
| _____      | ) |                  |

BEFORE THE HONORABLE J. FREDERICK MOTZ

November 7, 2011

Transcript of Jury Trial

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1                   Salt Lake City, Utah, November 7, 2011

2                                   \* \* \* \* \*

3                   THE COURT: We are, as you know, waiting for a juror.  
4                   Since he is coming in, I think we ought to wait. Um, let's  
5                   talk a little bit though about scheduling. Where do we  
6                   stand in terms of how long we think this is going to last?

7                   MR. JOHNSON: Well, Your Honor, in terms of  
8                   Plaintiff's case, we're pretty much on schedule.

9                   THE COURT: Well, what does that mean?

10                  MR. JOHNSON: That means that we would anticipate,  
11                  well, of course you never know about how long  
12                  cross-examination is going to be, but we would anticipate  
13                  finishing our case, um, next week sometime.

14                  THE COURT: Okay.

15                  MR. JOHNSON: And it obviously depends on the scope of  
16                  cross.

17                  THE COURT: When do the experts, when do they testify?

18                  MR. JOHNSON: Mr. Alepin will be next after  
19                  Mr. Frankenberg.

20                  THE COURT: Okay.

21                  MR. JOHNSON: So as early as tomorrow if we were able  
22                  to complete Mr. Frankenberg today. Um, and I would expect  
23                  Mr. Alepin would be a while. We do still have some videos  
24                  to show.

25                  THE COURT: Okay.

1 MR. JOHNSON: Um, and then we would anticipate  
2 probably Mr. -- Professor Noll probably the beginning of  
3 next week.

4 THE COURT: So you think you will be finished next  
5 week?

6 MR. JOHNSON: Well --

7 THE COURT: Subject to cross-examination.

8 MR. JOHNSON: Subject to cross. I mean if we have two  
9 days of cross on each witness, no, we're not going to make  
10 it. If we have -- if the cross comes anywhere close to the  
11 direct, then we would clearly make it.

12 THE COURT: What can Microsoft add at this point in  
13 time to what he has said?

14 MR. TULCHIN: Your Honor, we hadn't been told who the  
15 witnesses would be other than just in the last couple of  
16 days. We heard it was Mr. Frankenberg today followed by  
17 Mr. Alepin. Assuming that the only other live witnesses are  
18 Professor Noll and then Dr. Warren-Boulton who is the expert  
19 on damages, um, I guess I agree with Mr. Johnson we should  
20 be finished by, you know, I'm going to guess Wednesday or  
21 Thursday of next week with the plaintiff's case.

22 THE COURT: When -- how long do you think your case is  
23 going to last?

24 MR. TULCHIN: Um, my best hunch, Your Honor, and  
25 again --

1 THE COURT: I am not going to hold you down but  
2 just --

3 MR. TULCHIN: Right. I'm going to -- my guess is it  
4 will be somewhere in the neighborhood of three and a half to  
5 four weeks which is what we thought pretty much from the  
6 outset.

7 THE COURT: Which would take us through when?

8 MR. TULCHIN: Just doing the calculations, Your Honor,  
9 the week of Thanksgiving is a two-day week. We may have a  
10 couple of days next week to start, a day or two, because  
11 that is a five-day week, if I remember correctly.

12 THE COURT: That is one of the things I want to talk  
13 about, okay.

14 MR. TULCHIN: Okay. And then let's see if I'm doing  
15 the math right, I think that takes us until about the 14th  
16 or 15th of December. But I'm doing it in my head very  
17 quickly.

18 THE COURT: So realistically, let's see what day of  
19 the week is the 16th?

20 MR. TULCHIN: The 16th is next witness, Your Honor, if  
21 we're talking about November.

22 THE COURT: No, I'm talking about -- realistically, as  
23 I look at it, um, if we finish next week sometime, then we  
24 have got two weeks, Thanksgiving week, then one week the  
25 28th.

1 MR. TULCHIN: Yes, I think that is a full week, Your  
2 Honor.

3 THE COURT: Week of the 5th.

4 MR. TULCHIN: Yes.

5 THE COURT: Week of the 12th.

6 MR. TULCHIN: Yes. And --

7 THE COURT: We're going to go up -- we're going to go  
8 the week of the 19th.

9 MR. TULCHIN: Well, I'm hoping not, Your Honor. I'm  
10 hoping the three and a half weeks would get us to around to  
11 -- I hope I'm done around the 14th, 15th of December. Does  
12 that make sense?

13 THE COURT: But then there is closing arguments.

14 MR. TULCHIN: Correct, Your Honor, of course.

15 MR. JOHNSON: And there might be some rebuttal, Your  
16 Honor. I don't know.

17 THE COURT: Realistically, I don't see us -- I see us  
18 going right up until Christmas.

19 MR. TULCHIN: Well let me just say, Your Honor, that  
20 of course when Novell rests, we will re-evaluate the need to  
21 call all of the people on our list. And maybe again --

22 THE COURT: No. No. No. I'm just -- I am not -- I'm  
23 not looking for the --

24 MR. TULCHIN: I'm hoping we can do it quicker than  
25 what I just estimated.

1 THE COURT: Well, I had a hearing last Friday that did  
2 not complete in a National Security Case, and it would be  
3 helpful if we could have, for me, to have a four-day trial  
4 instead of the five-day trial next week. I assume we're  
5 going to have relatively substantial argument on the motion  
6 for judgment notwithstanding verdict.

7 MR. TULCHIN: We certainly will be prepared for that,  
8 Your Honor, of course at the Court's pleasure.

9 THE COURT: Well, this tells me as much as I'm going  
10 to know. Um, frankly it looks to me like I don't think  
11 we're -- my guess is we're not going to finish with the  
12 evidence until next Thursday. So we might have Thursday  
13 afternoon. I think I will take Friday off and maybe on  
14 Monday for the arguments and pick up on Tuesday, unless --  
15 unless that causes problems with people. Does that cause  
16 witness problems?

17 MR. TULCHIN: It may, Your Honor. I wonder if we  
18 could get back to you on that.

19 THE COURT: Well, that is exactly why I'm having this  
20 discussion.

21 MR. TULCHIN: Okay, yeah. I would like to --

22 THE COURT: Sounds to me like we need -- that I  
23 shouldn't take next Friday off.

24 MR. TULCHIN: Of course we're not in a position to  
25 tell the Court what schedule to adopt, Your Honor, but --



1 THE COURT: No. No. No.

2 MR. TULCHIN: But if you could sit next Friday, I  
3 think that would be helpful.

4 THE COURT: Okay. Well, that is right. All right.  
5 So for today then no evidentiary issues I gather.

6 MR. TULCHIN: Sorry, Your Honor?

7 THE COURT: For today there are no evidentiary issues  
8 that people know about?

9 MR. TULCHIN: There is one issue, Your Honor,  
10 concerning one document that is Defendant's Exhibit 6.

11 THE COURT: Tell me I didn't get your memo to it, it  
12 is my fault. Let me see the exhibit first.

13 MR. TULCHIN: Okay.

14 MR. JOHNSON: You have actually seen this exhibit  
15 before.

16 THE COURT: I have seen it before and I have seen your  
17 opposition.

18 MR. JOHNSON: We had a bench conference on this at the  
19 time of Mr. Harral's testimony.

20 THE COURT: Right. Comes out of Novell's file but  
21 Novell one of the few documents they preserved.

22 MS. NELLES: Here you go. Here is the copy of the  
23 exhibit.

24 THE COURT: I'm not happy about your wanting to keep  
25 it out, but that is the basis for a look. Okay tell me, I

1 have read the opposition, so tell me -- let me hear from  
2 Microsoft first sort of what is your position.

3 MS. NELLES: Good morning, Your Honor. I'm going to  
4 do my best Adam Paris imitation who is off running a  
5 marathon this weekend. I think this is, I won't belabor it,  
6 a simple point. This is a Novell document that is plainly a  
7 party admission. Um, it relates to a letter that went out  
8 on August 21 that was signed by Mr. Frankenberg who is going  
9 to testify today. We have heard it doesn't relate. First  
10 we heard it relates to NetWare, now we're hearing it doesn't  
11 relate to the 32-bit product. Um, Mr. -- you know  
12 Mr. Reynolds whose initials are at the bottom of this, he is  
13 available to Novell if they want to bring him in. If  
14 nothing else, it goes plainly to a pattern of delay and it  
15 comes from blaming Microsoft and it is relevant and we  
16 should be able to use it to cross-examine today.

17 THE COURT: I have read the opposition. I mean it  
18 sounds to me like you're trying to walk away from a document  
19 which you can, but it is your document.

20 MS. NELLES: It is their document, Your Honor.

21 MR. JOHNSON: Your Honor, we're not trying to walk  
22 away from it at all. Can I be heard?

23 THE COURT: Yeah.

24 MR. JOHNSON: You may recall that this document came  
25 up once before and we had a bench conference about it with

1 respect to the cross-examination of Mr. Harral who, as you  
2 know, was a developer with the share code team.

3 You allowed him to show the document to Mr. Harral.  
4 And Mr. Harral professed complete lack of knowledge with  
5 respect to this document and appropriately so. Then  
6 Mr. Tulchin then simply withdrew it and we had no further  
7 discussion. Now, that exchange should have given a bit of a  
8 clue to folks that the bugs being talked about here had  
9 nothing to do with the product that Mr. Harral was working  
10 on. Because as you know, Your Honor, without shared code,  
11 nothing will run on Windows 95. So if Mr. Harral didn't  
12 know about these bugs, um, it is very clear they have  
13 nothing to do with the new product.

14 THE COURT: That assumes that Mr. Harral is telling  
15 the truth. I am simply -- I'm not saying he is not, but  
16 theoretically --

17 MR. JOHNSON: But let me go on. You can't -- you  
18 can't have bugs unless you have something to run on the beta  
19 version of Win 95. In other words, how would you find the  
20 bug without a product to run on Win 95. There was no  
21 product, no known product, for the new Win 95 version of  
22 PerfectOffice. Mr. Harral and Mr. Richardson and other  
23 folks were working on that. There was no product. So when  
24 you're talking about bugs here, the evidence will show and  
25 I -- and I really think you were being misled here by

1 Microsoft, the bugs relate to Legacy products because there  
2 has to be backwards compatibility. In other words,  
3 PerfectOffice 3.0, which was a 16-bit product already in  
4 existence, WordPerfect 6.1 and 6.0A, need to be able to run  
5 on the new operating system which is about to come out. So  
6 they take the beta version of Win 95, they run these Legacy  
7 applications on that beta version, and lo and behold,  
8 despite Microsoft's promises that there was going to be  
9 compatibility, there are bugs which makes it so our Legacy  
10 products will not run on the new operating system.

11 Now, that has nothing to do with this case. It is a  
12 frolic and detour. We have never -- we have never asserted  
13 that because Microsoft when they had these bugs, and there  
14 was some delay in fixing them, that that was an  
15 anticompetitive act or there was any problem with that. But  
16 what Microsoft is trying to do with this document is suggest  
17 that it had something to do with the new product being  
18 developed for Windows 95. It doesn't. It is all Legacy  
19 product. In fact, the reference to the Win 95 client in  
20 there is a reference to the NetWare client which, of course  
21 as you know, is the -- is the server operating system of  
22 Novell. So these bugs, every last single one of them,  
23 relate to Legacy products which are not in issue in this  
24 case.

25 So the jury is going to be very confused by this. Now

1 I will say this, if we're going to get into bugs, that the  
2 fact of the matter is just prior to the release of Windows  
3 95, Microsoft came out with a list of some 200 bugs claiming  
4 that WordPerfect's products, including -- including  
5 PerfectOffice 3.0, the Legacy product, didn't work on  
6 Windows 95. It was a terrible article for us. And we stood  
7 up and said look, what are you talking about? These bugs  
8 have all been fixed. Our product now works fine on Windows  
9 95 yet they came out with this and put -- cast a shadow on  
10 the ability of our Legacy products to work on the new  
11 operating system that was about to come out. We have not  
12 gone there. We have not raised this issue because it is  
13 wholly tangential to the issues before this Court which is  
14 the new product that was being built for Windows 95. So  
15 this is not an omission, this document, we don't even know  
16 who wrote it. Mr. Miller who was deposed about this in 2001  
17 didn't recognize the document at all. Said he didn't say  
18 any of the things in there, and he didn't -- and he didn't  
19 know what even what it was about.

20 So we have got a document with an author unknown that  
21 cannot constitute an admission because the requirements for  
22 admission are that you have somebody that is in a position  
23 to have done something within the normal duties of  
24 employment, et cetera, et cetera, and you can't have that  
25 here. So if we are going to get into a debate about bugs,

1 it is just going to confuse the jury and we're going to be  
2 talking about an area that dealt with the Legacy products.  
3 We don't think that the Court should allow that unless they  
4 can provide -- I mean Mr. Frankenberg is going to testify,  
5 if they get into this with him, that it is a Legacy product.  
6 It is nothing to do with the new product for Windows 95. So  
7 the notion that there would have been bugs with respect to a  
8 product that wasn't even in existence yet is totally  
9 illogical.

10 In other words, for Microsoft to fix the bug, they  
11 have to have something to run on the operating system. They  
12 certainly didn't have a product, a new window, new  
13 WordPerfect for Windows 95 product to run. Mr. Harral and  
14 Mr. Richardson were laboring away night and day trying to  
15 create the shared code that would enable these products to  
16 even run on Windows 95.

17 THE COURT: That is not true. As I understand it,  
18 WordPerfect would run on Windows 95, it just wouldn't be  
19 able to get all of the information from other sources.

20 MR. JOHNSON: Let me make this clear, the Legacy  
21 products which were already in existence, PerfectOffice 3.0  
22 which was released in December 1994, that is the subject of  
23 the bugs.

24 THE COURT: I just want to understand conceptually  
25 that I am not -- my understanding is that WordPerfect is a

1 pure word processing application that would work on Windows  
2 95.

3 MR. JOHNSON: Not the new product being developed for  
4 Windows 95.

5 THE COURT: That is not my question. As I understand  
6 it, I mean again because it is -- is the jury here? As soon  
7 as they're here, we will start. I just want to conceptually  
8 make sure I understand it. My understanding as of right now  
9 is that WordPerfect has been developed through the  
10 partnerships into that nature was able to access information  
11 not simply in the word processing program. And that -- and  
12 the problem was that the withdrawal of the APIs prevented  
13 WordPerfect from being able to recreate that functionality.  
14 That is what the core of the problem is. For example, in  
15 the one that I really want to understand is QuickFinder but  
16 QuickFinder you all used as an -- that you could QuickFind  
17 from various sources of information not just word  
18 processing. But that is the core of the whole problem the  
19 shell and everything else that you just couldn't access the  
20 information sources. Now my understanding is that there is  
21 no question that WordPerfect, as a word processor, would  
22 work on top of Windows 95 and could be accessed either  
23 through the start button or through the icon.

24 MR. JOHNSON: No, Your Honor.

25 THE COURT: That is not correct?

1           MR. JOHNSON: I think that you -- you don't completely  
2 understand.

3           THE COURT: Well --

4           MR. JOHNSON: Let me make sure, let me try to make  
5 this very clear. Um, the 16-bit WordPerfect product, the  
6 Legacy product, 6.0, 6.1, would run fine on Windows 3.1 and  
7 eventually ran fine on Windows 95, even though Microsoft  
8 said it didn't, but it did, it ran fine on Windows 95.  
9 WordPerfect and Novell was engaged in trying to build a new  
10 product, a 32-bit product, a different product for the new  
11 Windows 95. That is the product that Mr. Harral and  
12 Mr. Richardson were working on. That product, during all of  
13 1995, did not run on the betas of Windows 95. They had this  
14 problem with the file open dialogue, and I think Mr. Gibb  
15 may have testified, you have to be able to open. So they  
16 had this problem that caused the entire product, the 32-bit  
17 product, not to be able to be built in a timely fashion and,  
18 in fact, was not released until sometime in 1996, I forget  
19 the exact date.

20           So there was no 32-bit product during 1995 of  
21 WordPerfect or of PerfectOffice that was -- that was running  
22 on the Win 95, Windows 95 operating system beta. There was  
23 no product. So when we talk about bugs here, what we're --  
24 the only thing we're talking about is fixing problems with  
25 running the Legacy products, the 16-bit products that were



1 already in existence. And that was the bug problem. And  
2 what I'm trying to --

3 THE COURT: We have got two levels of inquiry here.  
4 One is about what the problem was about, the other about  
5 Exhibit 6. Who wants to start.

6 MR. HOLLEY: Your Honor, Mr. Johnson could not be more  
7 wrong. His own witness Mr. Richardson testified that they  
8 had the product up and running on Windows 95 betas using the  
9 windows common file open dialogue. The product was running  
10 and they were testing it. And Your Honor is exactly right.  
11 Instead of just doing that, which would have been perfectly  
12 fine, they decided to try to do a lot more work so that  
13 things like QuickFinder and the e-mail client would show up  
14 in the windows shell and make windows a better operating  
15 system. But I think it is completely wrong to say that  
16 there were no bugs encountered in developing the product on  
17 Windows 95. That is what they were doing all during 1995.  
18 And the whole point of the beta is to have people report  
19 bugs on the new operating system. So I regret to say that  
20 what Mr. Johnson is saying is flatly wrong.

21 MR. JOHNSON: It is not wrong, Your Honor, and here is  
22 why. If Microsoft can point to an alpha or a beta of the  
23 new 32-bit operating system that they had in order to fix  
24 some bugs on the new 32-bit product, then there might be  
25 some validity to what Mr. Holley just said. But there was

1 no alpha or beta version of PerfectOffice for Windows 95.  
2 It didn't exist because of the problems the shared code team  
3 was having, because the shared code team, as you remember,  
4 is the starting point for everything else. You cannot run  
5 these products without having the shared code work. So when  
6 Mr. Richardson said we had -- they started and had something  
7 running which was slow and had a lot of problems and it  
8 wasn't working and they went back to Microsoft and tried to  
9 get more information to make it work and they were shut down  
10 by Premier Support and they wouldn't talk to them about the  
11 shell any more, it was at that point they made the decision  
12 to go to -- to take another option and to try something else  
13 to build the product that would work on Windows 95. But the  
14 important part for you to understand, Your Honor, in order  
15 to report a bug you have to be able to give a product to the  
16 people trying to fix the bug so they can test it. In other  
17 words, the people in Microsoft in order -- you tell them you  
18 have a bug and they say well give me the product and let us  
19 see if we can recreate that bug, let us see if we can fix  
20 that bug, the only products that were being tested for bugs  
21 during this 1995 period, were the Legacy products. The  
22 products that needed to be compatible with the new operating  
23 system.

24 So when they tried to claim that this memo or the bugs  
25 and Mr. Frankenberg's letter had anything to do with the --

1 with the matters in dispute in this case, they're misleading  
2 the Court and they're going to mislead the jury. There  
3 is -- there is no -- and if there had been such bugs, the  
4 developers of shared code would have known about it. And  
5 there certainly isn't any indication that Mr. Harral is  
6 sitting up there lying. This man has no stake in this. He  
7 has not been a Novell employee for years.

8 THE COURT: I'm not suggesting that.

9 THE CLERK: They are here.

10 THE COURT: Let's get them in. Let's get them in.

11 (Whereupon, the jury returned to the courtroom.)

12 THE COURT: Good morning everybody. I hope you had a  
13 nice week.

14 Next witness?

15 MR. JOHNSON: Good morning, Your Honor. Thank you  
16 very much. We're going to start this morning with  
17 Mr. Robert Frankenberg.

18 THE COURT: Mr. Frankenberg.

19 THE CLERK: Raise your right hand, please.

20 ROBERT JOHANN FRANKENBERG,  
21 called as a witness at the request of the Plaintiff,  
22 having been first duly sworn, was examined

23 and testified as follows:

24 THE WITNESS: I do.

25 THE CLERK: Please be seated.

1 MR. JOHNSON: Your Honor, these are the exhibits that  
2 we will be using with Mr. Frankenberg.

3 THE COURT: Thank you.

4 THE CLERK: Please state your full name and spell it  
5 for the record.

6 THE WITNESS: Robert Johann Frankenberg, R-O-B-E-R-T  
7 J-O-H-A-N-N F-R-A-N-K-E-N-B-E-R-G.

8 DIRECT EXAMINATION

9 BY MR. JOHNSON:

10 Q. Mr. Frankenberg, here is a set of exhibits for  
11 you. Good morning, Mr. Frankenberg. Can you tell the jury  
12 where you presently live?

13 A. We live in Alpine, Utah.

14 Q. And how long have you lived in Utah?

15 A. Since 1994.

16 Q. What caused you to move to Utah in April of 1994?

17 A. Um, I accepted the position of president of  
18 Novell and moved from California to here.

19 Q. And how long were you with Novell?

20 A. Almost two and a half years.

21 Q. Can you tell us why you left Novell?

22 A. My wife was diagnosed with metastasized breast  
23 cancer in July of 1996 and the prognosis was not good. She  
24 was given less than a 20 percent chance of surviving.  
25 Fortunately, the prognosis was wrong. She is still with us

1 and feisty as ever. But I needed time to be with my wife  
2 and, um, chose to leave Novell at that point in time.

3 Q. And why did you stay in Utah after leaving  
4 Novell?

5 A. This is a great place to live. We had come to  
6 enjoy the environment, loved the outdoors, and where better  
7 than Utah to enjoy that.

8 Q. Are you currently employed, sir?

9 A. No, I am retired.

10 Q. Are you a member of any local boards of  
11 directors?

12 A. Yes, I am. I am on the board of Westminster  
13 College and have been on the board since 1997. The last  
14 five years I have been privileged to be the chair of that  
15 board. I am also on the board of the Sundance Institute  
16 which is in Park City, and a company by the name of Veracity  
17 Communications which is headquartered in Provo.

18 Q. Can you tell the jury about your early  
19 educational and work experience after graduating high  
20 school?

21 A. When I graduated from high school, I was drafted  
22 actually before graduation, and chose instead to go into the  
23 Air Force. I spent four years in the Air Force and during  
24 that during that time, I was able to complete two years of  
25 college. Upon leaving the Air Force, I went to work for

1 Hewlett Packard and worked full-time, went to school  
2 full-time, and completed a degree in computer engineering  
3 from San Jose State in 1974. Later, Hewlett Packard sent me  
4 to Stanford to get an Executive MBA which I completed in  
5 1986.

6 Q. What was Hewlett Packard's business at the time  
7 that you began working for them?

8 THE COURT: It is hot in here. That is the reason  
9 that window is open.

10 THE WITNESS: Hewlett Packard was best known at that  
11 time for its electronic instrumentation, a wide range of  
12 instruments for testing electronics. They had a small  
13 computer start up business which I joined in 1969.

14 Q. (By Mr. Johnson) How long were you at, and I'm  
15 going to refer to Hewlett Packard as HP if that is all right  
16 with you?

17 A. Works for me and they won't mind.

18 Q. How long were you at HP?

19 A. Almost 25 years. A couple of months short of  
20 25 years.

21 Q. Can you take the jury through the progression of  
22 any position changes you had at HP?

23 A. I started at Hewlett Packard as a manufacturing  
24 technician. And my job was to troubleshoot and fix  
25 computers on the production line. After about a year of

1           doing that, I went into the development lab and did  
2           technician work and I was shortly thereafter I was fortunate  
3           to be able to do design work. So I designed a computer  
4           memory and then later a number of -- participated with the  
5           design of a number of computers for Hewlett Packard. Became  
6           -- I was promoted to a project manager and I led the  
7           development of a number of computer systems. Moved into  
8           marketing, which was fascinating, and got well acquainted  
9           with what we weren't doing right and what we needed to  
10          improve on. And from there went back in to development and  
11          became a developing executive, a general manager, and in 19  
12          -- excuse me, in 1989 became the vice president of the  
13          corporation responsible for the networking business. And in  
14          1991, I became the leader of the personal computer business  
15          for Hewlett Packard.

16                 Q. And was that your last position at HP?

17                 A. Yes, it was.

18                 Q. And while in that vice president position, did  
19          you have any relationship with Microsoft?

20                 A. Yes. Microsoft was a very key supplier to  
21          Hewlett Packard. We met with them on approximately a  
22          quarterly basis to discuss issues, to look at new things  
23          that they were doing, and had, I would say, regular sessions  
24          with them.

25                 Q. While you were in as a vice president of HP, did

1           you have any relationship with Novell?

2           A.    Yes, I did. Hewlett Packard executives at the  
3           time had additional assignments. And one of my additional  
4           assignments was to be the liaison with Novell. And in that  
5           time I met on a quarterly basis with Novell and specifically  
6           with Ray Noorda who was the chairman and CEO at the time.

7           Q.    And what was your impression, if any, of Novell  
8           as a company based on those interactions?

9           A.    Novell was clearly a very capable company. They  
10          built a very strong operating system called NetWare that had  
11          garnered a lot of -- a huge customer base and had grown that  
12          into a very significant business.

13          Q.    So after I think you said 25 years at HP you came  
14          to Utah to work for Novell. Why did you leave HP to come to  
15          work for Novell?

16          A.    Um, well the -- in looking at Novell's  
17          capabilities and what I thought were important opportunities  
18          in the computer business, I believe that Novell was in a  
19          wonderful position to lead the next major advance in the  
20          computer business and that was to make the network available  
21          and useful to everyone.

22          Q.    Can you describe the events that led up to you  
23          taking over eventually as the Chief Executive Officer of  
24          Novell?

25          A.    Yes, I can. I remember very clearly one of these



1 meetings that I mentioned that we had on a regular basis,  
2 um, Ray Noorda and I had met with our respective teams and  
3 listened to the issues and decided on a number of action  
4 items. And as was our custom, we would get together  
5 afterwards for an hour or so, just the two of us, and talk  
6 about what was going on in the industry and what we needed  
7 to do to make progress.

8           Toward the very end of that, Ray said well I suppose  
9 that you know that the board wants to replace me as CEO.  
10 And I said well Ray it would be hard not to know, it is all  
11 over the papers, you know. And he said who do you think  
12 would be a good replacement? And I said, well I always  
13 thought I would be, joking. And that afternoon the search  
14 firm called me and I looked into the opportunity over the  
15 next week or so and accepted the position as president, not  
16 CEO, but as president of Novell.

17           When I arrived at Novell a few days after that, Ray  
18 had concluded that it would be a better idea for me to join  
19 as CEO, and he discussed that with the board. And so I was  
20 offered and accepted the position of CEO of Novell at that  
21 point in time.

22           Q. When you were in discussions with Novell, what,  
23 if anything, did Novell tell you about its plans to acquire  
24 WordPerfect?

25           A. They had me sign a nondisclosure agreement and

1 told me that they had nearly completed, essentially  
2 completed, an agreement with WordPerfect to acquire the  
3 company and with Moreland would acquire its Quattro Pro  
4 spreadsheet product, and that they were going to use that to  
5 create a suite of applications to compete with Microsoft  
6 Office.

7 Q. Let's turn now to Defendant's Exhibit 308 which  
8 should be the first document in the binder in front of you.  
9 And let me show that to the jury, Mr. Goldberg. And  
10 Mr. Frankenberg, can you explain to the jury what this  
11 document is?

12 A. This was a briefing document for, I believe, for  
13 the announcement of my joining Novell.

14 Q. And drawing your attention to the first question  
15 and answer here, um, does this answer reflect your thoughts  
16 about the proposed merger between Novell and WordPerfect?

17 A. Yes, it does.

18 Q. And as stated here, were you enthusiastic about  
19 the deal?

20 A. Yes, I was. I had some concerns about taking  
21 Microsoft on, but I was very enthusiastic about the  
22 opportunity to create networked applications.

23 Q. When was the merger announced in relation to when  
24 you arrived at Novell, the merger between WordPerfect and  
25 Novell?

1 A. A few days before I arrived.

2 Q. Do you recall at the time of the merger that the  
3 Novell stock price declined?

4 A. Yes, it did.

5 Q. Do you recall how much it declined?

6 A. If I remember correctly, about 20 percent.

7 Q. Did you anticipate that decline in Novell's  
8 stock?

9 A. Yes, I did. I thought that the market would  
10 react negatively to Novell taking on Microsoft.

11 Q. Did the Novell Board of Directors have any  
12 reaction to that decline?

13 A. No, they -- I think they anticipated it as well.

14 MR. TULCHIN: Objection as to what others thought,  
15 Your Honor.

16 THE COURT: Sustained and struck.

17 Q. (By Mr. Johnson) Mr. Frankenberg, did you have  
18 any understanding as to what the other members of the board  
19 of directors reaction was to that decline?

20 MR. TULCHIN: Same objection.

21 THE COURT: Sustained.

22 Q. (By Mr. Johnson) Um, was there any second  
23 guessing amongst the board with respect to -- based on the  
24 decline in the stock price?

25 A. Um, no, there was not.

1 Q. Were you aware of whether there were any other  
2 bidders for WordPerfect?

3 A. Yes, Lotus Corporation was an avid bidder for  
4 WordPerfect.

5 Q. To your knowledge, was there a bidding war for  
6 WordPerfect?

7 A. Yes, there was.

8 Q. Let me show you what has been marked as  
9 Plaintiff's Exhibit Number 153 which is the next document in  
10 your binder. Can you identify this document, please?

11 A. This is the Board Meeting Minutes from March 20  
12 of 1994. It was the -- these are the Board Meeting Minutes  
13 for Novell for March 20th 1994.

14 Q. Turning to the third page of these minutes with  
15 the Bates stamp ending 7229, Mr. Goldberg if you could  
16 highlight the third, that would be fine, the third point  
17 there where it states, quote, "Lotus Development Corporation  
18 was continuing to up its proposed purchase price for  
19 WordPerfect over and above what Novell was willing to pay."  
20 Did these minutes reflect the bidding war that was ongoing  
21 between Lotus and Novell over WordPerfect?

22 A. Yes, they clearly do.

23 Q. Do you have any understanding as to why Lotus was  
24 interested in WordPerfect?

25 A. Well, WordPerfect was the best word processor in

1 the market at that point in time, and Lotus had the best  
2 spreadsheet, Lotus 123, and they were desirous of putting  
3 those together and creating a suite of applications to  
4 compete with Microsoft Office.

5 Q. Now going back to the merger between Novell and  
6 WordPerfect, do you recall when the transaction was  
7 finalized, actually closed?

8 A. Um, late June of 1994.

9 Q. Was a plan developed for integrating the business  
10 applications into the Novell Company?

11 A. Yes, it was.

12 Q. As a part of that plan, were the business  
13 applications run as a separate division?

14 A. Yes, it was.

15 Q. And why was that?

16 A. To give it the freedom of actually to make its  
17 own decisions and address the market at both its  
18 opportunities and its challenges.

19 Q. Let's turn now to Defendant's Exhibit Number 4  
20 which should be the next document in your binder there.  
21 Take a moment to take a look at that. Do you recognize this  
22 document?

23 A. Yes, this is a version of the unification plan or  
24 the integration plan for WordPerfect.

25 Q. And what is the purpose of this document?

1           A.    The purpose of the document is to lay out the  
2           plan for how WordPerfect and Quattro Pro would be integrated  
3           into the company, and how the new organization would be set  
4           up to address the business applications.

5           Q.    If you could turn, please, to the second page,  
6           the Bates stamp ending 6569, and if we could focus in on the  
7           second full paragraph, how many business units would the  
8           business applications products be divided into?

9           A.    Three business units.

10          Q.    And they are?

11          A.    Um, the business applications, consumer products  
12          and workgroup products.

13          Q.    Now, this paragraph goes on to talk about relying  
14          on the Novell organization for a number of services, quite a  
15          list of services, including operations, corporate marketing,  
16          education and training, services and support, sales, legal,  
17          financing and accounting, et cetera. It has a number of  
18          other ones there. Can you explain to the jury why you would  
19          be relying on Novell for those services for the business  
20          applications?

21          A.    Well, these were shared services so that they  
22          could be far more efficient. And they were shared amongst  
23          all of the business units of Novell. The reason for doing  
24          that was to centralize it and say make them efficient and  
25          also it aligned the business units, the new business units,

1 business applications, with the other business units in the  
2 company.

3 Q. Staying on the same page and looking at the sub  
4 heading some key points down below, you will see the first  
5 one says that quote, "We are making new investments in  
6 Chicago Development." What is Chicago, Mr. Frankenberg?

7 A. Chicago is the code name of the project at  
8 Microsoft that ultimately became Windows 95.

9 Q. To your knowledge was Chicago a 32-bit operating  
10 system?

11 A. Yes, it was.

12 Q. To your knowledge, did WordPerfect have  
13 experience in working with 32-bit systems prior to  
14 Microsoft's development of Chicago?

15 A. Yes. WordPerfect ran on a number of other 32-bit  
16 systems including digital equipment corporations, fax,  
17 operating fax systems and several Unix systems. So they  
18 were well acquainted with the 32-bit development.

19 Q. If you could turn to the next page which is the  
20 second page of the document with the Bates stamp ending  
21 6570. Under the heading business application, applications,  
22 the third bullet point says, quote, "After Windows 3.1  
23 16-bit products are released this year, move large  
24 percentage of Windows resources over to Chicago 32-bit."  
25 Prior to the date of this memo, and the date of this memo is

1 August 3, 1994, was WordPerfect already working on a Chicago  
2 based release?

3 A. Yes, it was.

4 Q. And what part of the business applications group  
5 was working on the Chicago based release?

6 A. The shared code group would have been working on  
7 it at that time.

8 Q. If you would turn then to Page 4 of this document  
9 that was Bates ending 6572, there is some details about the  
10 business of the business applications unit. Drawing your  
11 attention to the first and second bullet points, is this an  
12 overview of what was included within the development group  
13 of the business applications division?

14 A. Yes, it is.

15 Q. I would like you to focus in on the fact that  
16 development includes WordPerfect for Windows, DOS,  
17 Macintosh, and Unix. Can you explain to the jury what that  
18 means?

19 THE COURT: I'm sorry, where are you?

20 MR. JOHNSON: Page 3 of the document, Your Honor, with  
21 the Bates stamp note Bates stamp ending 6572 under the  
22 heading business applications.

23 THE COURT: I found it.

24 Q. (By Mr. Johnson) And I'm looking at the first  
25 two bullet points. Um, again, I would like to focus you in



1 on, Mr. Frankenberg, the fact that development included  
2 WordPerfect for Windows, DOS, Macintosh and Unix. Can you  
3 explain to the jury what that means?

4 A. Well, what that means is that WordPerfect was  
5 designed to run across a range of operating systems. So not  
6 only in Windows, but DOS which was the earlier version of  
7 Microsoft's operating system, Macintosh works from Apple,  
8 and Unix which there were a number of implementations from  
9 quite a few different companies. And it was one of the  
10 things that was very attractive about WordPerfect that it  
11 could run across all of those. And if a company had those  
12 systems, people learned one word processor and would be able  
13 to use it on all of the systems.

14 Q. And during your tenure with Novell, did  
15 WordPerfect continue to develop versions of WordPerfect for  
16 multiple operating systems?

17 A. Yes, we did.

18 Q. And during your tenure, did Novell also develop a  
19 version of WordPerfect for the Linux operating system?

20 A. Yes, we did.

21 Q. Given that Microsoft had a monopoly in PC  
22 operating systems using Intel Processors at this time, why  
23 did Novell continue to develop cross-platform versions of  
24 WordPerfect?

25 A. Well, there were two main reasons. One reason

1 was that our customers, as I mentioned a moment ago, wanted  
2 to have one word processor that could work across their work  
3 station or their PCs or their larger systems. The other  
4 reason was to provide some real competition in the operating  
5 system environment.

6 Q. If you turn to page five, the next page in this  
7 document, that is Bates stamp ending 6573, and turning to  
8 the second bullet point under business applications, it  
9 states that quote, "There are very few resources on Chicago  
10 at this time. Even though we are phasing out WordPerfect  
11 for VMS, all resources need to be applied to Chicago, and in  
12 parentheses (or Tapestry). We do not want to be  
13 significantly behind Microsoft, if at all, in releasing a  
14 Chicago suite."

15 First of all what was VMS?

16 A. VMS was the operating system for digital  
17 equipment, fax, computer system. The large 32-bit system  
18 that was very popular at the time.

19 Q. And why were you phasing out further development  
20 on VMS?

21 A. Because we had a completed product, it was  
22 working well, it was well accepted and further development  
23 wasn't necessary.

24 Q. This bullet point states that "all resources need  
25 to be applied to Chicago," and then in parenthesis "or

1 Tapestry." Can you tell us what Tapestry was?

2 A. Tapestry was the next generation of our -- of our  
3 suite, and it included a number of various IT capabilities  
4 that were under initial development at that point in time.

5 Q. Was Tapestry planned to be cross-platformed?

6 A. Yes, it was.

7 Q. So do I understand correctly that back in 1994  
8 Novell WordPerfect was already working on its next  
9 generation of cross-platform business application products?

10 A. Yes, we were.

11 Q. The last sentence states here, "We do not want to  
12 be significantly behind Microsoft, if at all, in releasing a  
13 Chicago suite." How important was it for Novell not to be  
14 significantly behind Microsoft, if at all, in releasing a  
15 Chicago suite?

16 A. It was vitally important. The reason is that the  
17 moment a new operating system environment is announced,  
18 typically, previously sales, previous products drop  
19 dramatically, and customers begin making decisions about  
20 which products they'll use in this newly released operating  
21 system. Um, so, if we weren't there at the point in time  
22 that the new operating system was released, we wouldn't be  
23 considered. And every day that we weren't there, it would  
24 be a day that we would lose business. Not only then, but  
25 for the future because people would make decisions to go

1 with someone else.

2 Q. And is the reference to releasing a Chicago suite  
3 in this paragraph a reference to PerfectOffice?

4 A. It is a reference to PerfectOffice, yes.

5 Q. Can you describe -- I think we're done with that,  
6 Mr. Goldberg. Thank you.

7 Can you describe your understanding of how  
8 WordPerfect had been -- had traditionally been selling its  
9 products prior to the merger with Novell?

10 A. WordPerfect was very effective in selling their  
11 products face-to-face. They had a large number of very  
12 knowledgeable people who went out and called on large and  
13 small customers, even individuals, and sharing with them the  
14 capabilities, demonstrated product, and people bought the  
15 product and that was fine except for the fact that it was  
16 very expensive to sell it that way, especially one on one.

17 Q. How did that differ, if at all, from Novell's  
18 mode of selling software products?

19 A. Novell had the largest and one of the most  
20 effective distributor dealer organizations in the world. We  
21 had between 20 and 25,000 dealers who sold the products to  
22 end customers including a large, medium to large customers  
23 and individuals. It was highly respected and it was very  
24 efficient. And one of the key things that made the  
25 combination of WordPerfect and Novell interesting from a

1 business standpoint was being able to take advantage of  
2 these 20 to 25,000 dealers in selling the product. It was  
3 also more efficient because you didn't have to have a  
4 knowledgeable person in front of an individual buyer. That  
5 knowledge could be transferred to a dealer, and that person  
6 in the dealership could provide that information. So much  
7 like buying a car. The dealer, the sales rep at the dealer,  
8 could represent us in that regard.

9 Q. So what were your plans for selling the business  
10 applications after the merger?

11 A. We were -- our plan was to shift the model to  
12 sell product through our huge dealer and distributor  
13 network, to retain people who were knowledgeable so that  
14 they could train people in the dealers, and retain a number  
15 of people that could sell to large companies directly. But  
16 that we would make use of this distinct advantage that we  
17 had in the marketplace to sell software.

18 Q. Did your plan include any changes to the combined  
19 sales force of Novell and WordPerfect after the merger?

20 A. Yes. Unfortunately it meant that we needed to  
21 reduce the number of people, it is always painful to do  
22 that, but we had to reduce the number of people in the  
23 company, um, to gain the advantages of being more efficient  
24 and more effective in selling.

25 Q. And have you been, during your history of

1 business, have you been part of other mergers?

2 A. Yes, many times.

3 Q. And are layoffs after mergers usual or unusual?

4 A. It is almost always the case, unfortunately.

5 Q. Are you familiar with the acronym OEM?

6 A. Yes. OEM means original equipment manufacturer.

7 Q. Now, you worked for HP for many years. Was HP an  
8 OEM?

9 A. Yes. HP was an OEM. We built and sold personal  
10 computers, hence the original equipment, and we were the  
11 manufacturer of that equipment.

12 Q. During your tenure at Novell, did Novell have any  
13 plans to sell its business applications to OEMs?

14 A. Yes, we did. Um, we -- we planned on selling  
15 applications that would be preloaded onto the computer so  
16 that people wouldn't have to load them and get them started  
17 and go through all of that work. We also planned to have  
18 systems preloaded with demos and with free trials so that  
19 people could try them out and then hopefully purchase them  
20 after the fact.

21 Q. What if any advantages are there to applications,  
22 developers and selling to the OEM channel?

23 MR. TULCHIN: Objection, Your Honor. This is  
24 irrelevant. This is all Count VI material.

25 THE COURT: Overruled.

1 Q. (By Mr. Johnson) Go ahead, Mr. Frankenberg.

2 A. Um, the key advantages are several. One is that  
3 you could reach customers that you wouldn't otherwise reach.  
4 Especially with the free trial that people give your  
5 software a try and see how it works and hopefully come to  
6 like it.

7 It was also very advantageous from the standpoint of  
8 cost. The product was there, preloaded, ready to go, um,  
9 and didn't require a box of software and inventory and all  
10 that sort of thing. And so it was a very efficient way to  
11 reach potential new customers.

12 Q. Mr. Frankenberg, I would like to go back to that  
13 Defendant's Exhibit 308 which was the first document that we  
14 looked at. And again, that first question and answer on  
15 this document. You spoke here of the opportunity with  
16 WordPerfect to develop a new class of networked  
17 applications. Can you explain to the jury what you meant by  
18 networked applications?

19 A. Yes, networked applications were applications  
20 that worked together so you could create something in a  
21 spreadsheet and include it in a word processing document.  
22 So they were integrated in that way and you didn't have to  
23 cut and paste as you used to have to do. They were also  
24 integrated with the network so that anything on the network  
25 could be accessed from those applications without the user

1           having to understand all of the details of the network. In  
2           many ways we have that today, although it could be a little  
3           easier than what it is, um, but that was the idea behind  
4           networked applications. It was a very exciting new area and  
5           an area where we could hide the complexity of the network  
6           and the complexity of the systems from users and yet give  
7           them the capability to make it useful.

8           Q.    Before you began as CEO of Novell, what was  
9           Novell's main product?

10          A.    Novell's largest product and most significant  
11          product was called NetWare.

12          Q.    So how does Novell's strength with NetWare  
13          relate, if at all, to the concept of NetWare applications?

14          A.    Novell had approximately 40,000,000 users of  
15          their networks. And one of the things that Novell brought  
16          to the table was in depth understanding of network. And we  
17          saw the opportunity to make the network even more useful to  
18          people by hiding it, by making it so that you didn't have to  
19          understand it, putting it behind the applications, and from  
20          that giving them more value to our current users as well as  
21          new users.

22          Q.    Are you familiar with the concept of the thin  
23          client?

24          A.    Excuse me. Usually I don't talk this much. Can  
25          you repeat the question?



1 Q. Sure. Are you familiar with the concept of the  
2 thin client?

3 A. Yes, I am.

4 Q. Can you explain to the jury what thin client  
5 means?

6 A. A thin client means that the user interface to an  
7 application is on the device that is on the desktop. And  
8 all of the application and information is across the network  
9 on the server. What that means is that you can have a much  
10 lower cost device on the desktop and you can centrally  
11 administrate the applications so it is much more efficient  
12 rather than having them scattered all over potentially a  
13 large company all over the world.

14 Q. Was the thin client concept a part of your vision  
15 for network applications?

16 A. Yes, it definitely was.

17 Q. I would like you to turn now to Plaintiff's  
18 Exhibit 229. Can you tell us what this document is?

19 A. This document is a transcript of my speech to the  
20 fall Comdex Convention in November of 1994.

21 Q. And would this document have been created in the  
22 ordinary course of Novell's business?

23 A. Yes, it would have. I regularly gave speeches,  
24 public and not so public speeches, to a significant number  
25 of audiences.

1 Q. And what is Comdex?

2 A. Comdex was the largest computer convention in the  
3 world. It typically was held in Las Vegas and people  
4 attended it from the -- from the industry. The press was  
5 there, the customers were there, it was a great place to  
6 preview new capabilities and learn about what was going on  
7 in the industry.

8 Q. If we could bring up, Mr. Goldberg, the third  
9 paragraph there on the first page. Um, that paragraph  
10 begins with a reference to pervasive computing. Can you  
11 tell the jury what that is?

12 A. Yes, I can. Um, pervasive computing is  
13 connecting people to other people, and the information that  
14 they need, and it is giving them the power to act on that  
15 information any time, any place. In fact, it has come about  
16 as so we expect today from computers and networking. At the  
17 time it was only a vision.

18 Q. I noticed you were able to say that phrase  
19 without even looking at the document. Was this a phrase  
20 that you developed?

21 A. Yes, it was. I said it many times every week.

22 Q. How does persuasive computing relate, if at all,  
23 to your product vision for WordPerfect's office productivity  
24 applications?

25 A. We saw the WordPerfect office product suite,

1 PerfectOffice, as the interface to pervasive computing.  
2 People would go there, be able to access all of the  
3 information they need, manipulate it, communicate about it  
4 to other people, and even perform transactions in  
5 cyberspace.

6 Q. How, if at all, did pervasive computing relate to  
7 the internet?

8 A. The internet in 1994 was still in its infancy.  
9 It grew quickly. And it was clear at that time that it  
10 would become one of the most important, as they were called  
11 then, information highways to provide connectivity to other  
12 businesses, to information sources, and ultimately to  
13 provide the ability to perform transactions over the  
14 internet.

15 Q. And what, if anything, did Novell do to include  
16 the internet in its pervasive computing model?

17 A. We licensed NetScapes Navigator which was the  
18 foremost browser at the time and included it in our  
19 PerfectOffice product.

20 Q. Do you recall whether Novell ever entered into an  
21 agreement with NetScape?

22 A. Yes, we did. We entered into an agreement to  
23 license the NetScape Navigator and that includes the ability  
24 to distribute the product through our huge distribution  
25 channel.

1           Q.    And if you would turn now to Plaintiff's Exhibit  
2           Number 268 in your binder.  And do you recognize this  
3           document?

4           A.    Yes.  This is the software license agreement  
5           between NetScape and Novell for NetScape Navigator.

6           Q.    And why did Novell enter into this licensing  
7           agreement with NetScape?

8           A.    Because the NetScape Navigator was the foremost  
9           browser available at the time.  Um, we saw the opportunity  
10          to integrate with NetScape Navigator to connect our  
11          PerfectOffice products with it and for our customers to be  
12          able to make use of it to access information throughout the  
13          internet.  NetScape saw it as a big positive because we --

14          MR. TULCHIN:  Object to what NetScape said.

15          THE COURT:  Sustained.  Sustained.

16          MR. JOHNSON:  That is fine, Mr. Frankenberg.

17          Q.    (By Mr. Johnson) Can you tell us generally what  
18          this agreement provided to Novell?

19          A.    It provided Novell with the ability to include  
20          NetScape Navigator with our products, to integrate them, and  
21          to distribute the product.

22          Q.    And during your tenure at Novell, did Novell  
23          actually bundle NetScape Navigator with any of its business  
24          applications?

25          A.    Yes, we did, with WordPerfect office.

1 Q. You have mentioned PerfectOffice a number of  
2 times. Can you tell us what PerfectOffice was?

3 A. PerfectOffice was our suite of office  
4 productivity applications that included WordPerfect, Quattro  
5 Pro, WordPerfect Presentations, a personal information  
6 manager, a forms package, a database package and somebody's  
7 hiring products and AppWare.

8 Q. When did Novell first release a version of  
9 PerfectOffice?

10 A. In late December of 1994.

11 Q. And do you recall the particular version number  
12 for that PerfectOffice?

13 A. Yes, I do. It was my Christmas present. It was  
14 called PerfectOffice 3.0.

15 Q. And what operating system was PerfectOffice 3.0  
16 developed to run on?

17 A. It ran on Windows 3.1.

18 Q. If we could turn now to Plaintiff's Exhibit  
19 Number 412. Do you recognize this document?

20 A. Yes, I do. It is a strategy paper for  
21 PerfectOffice.

22 Q. And turning to Page 2 of the actual document  
23 which is past the table of contents, Bates stamped at the  
24 end 8191, if we could bring up, Mr. Goldberg, the top two  
25 paragraphs. Mr. Frankenberg, the top paragraph talks about

1 the strengths and weaknesses of the suite offerings by  
2 Microsoft and Lotus. Do you have a recollection or any  
3 recollection in both Microsoft's Office and Lotus's smart  
4 suite offered only partial integration solutions in 1994?

5 A. Yes, I do.

6 Q. Turning your attention to the second paragraph  
7 which states quote, "the majority of customers today have  
8 not chosen to adopt either one of today's leading suites.  
9 According to the January 1994 ComputerWorld Software Suites  
10 Study, 74 percent of users have not yet adopted a suite  
11 standard."

12 What significance, if any, is it to Novell that  
13 the majority of customers have not yet chosen to adopt  
14 either Microsoft's Office or Lotus's smart suite?

15 A. Well, I admit that we had a significant  
16 opportunity, had a large number of customers or the vast  
17 majority of customers already chosen it, it would have been  
18 very difficult to overcome. But fortunately for us, three  
19 quarters of the market approximately hadn't made a decision  
20 yet. So it was a great opportunity for us.

21 Q. Moving down to the section marked "what do  
22 customers really want," if we could bring up the first  
23 paragraph there. It states in part, I think, beginning with  
24 the second sentence, quote, "Traditionally, the word  
25 processor, more than any other application, has played the

1 largest role in influencing the purchasing decision of a  
2 potential suite buyer and it quotes to an IDC Summer  
3 Software Survey, 1993. As the leading vendor of word  
4 processing software, WordPerfect has direct access to the  
5 largest user base of potential suite customers in the  
6 industry."

7 What significance, if any, did WordPerfect's  
8 access to the largest user base of potential suite customers  
9 have on Novell's plans for the PerfectOffice suite?

10 A. Well, the largest, having the largest user base  
11 gave us a distinct advantage. As the earlier point that was  
12 made in this same document said that the word processor was  
13 the most frequently used application and people would not  
14 want to learn another word processor, find that awkward, so  
15 we had the advantage of being able to go to that largest  
16 install base and with the most important application  
17 convince them to use our suite rather than Lotus's or  
18 Microsoft's.

19 Q. And perhaps you should explain. What do you mean  
20 by WordPerfect's user base, a large install of user base?

21 MR. TULCHIN: Objection, Your Honor. The witness  
22 hasn't said that he wrote this document. So when the  
23 question asked what do you mean, I think Mr. Johnson is just  
24 asking the witness to say what the document means. Just  
25 slightly different.

1 THE COURT: Overruled.

2 MR. JOHNSON: Go ahead, Mr. Frankenberg.

3 THE WITNESS: Could you repeat the question, please.

4 Q. (By Mr. Johnson) Sure. I just wanted you to  
5 provide some context to the jury of what is meant by  
6 WordPerfect's user base as used in this document?

7 A. We have the largest install base, the largest  
8 user base of word processing software in excess of 20  
9 billion users.

10 Q. And in 1994, was WordPerfect's user base bigger  
11 or smaller than Microsoft's word user base?

12 A. It was larger.

13 Q. In 1994, did you have a view, if any, as to  
14 whether there was an opportunity for Novell to capture a  
15 significant portion of the new users of office productivity  
16 application suites?

17 A. Yes, we thought we had a very good opportunity to  
18 do that both because of the install base of word processing  
19 WordPerfect and because so many had not yet made a decision  
20 as to which suite they were going to buy.

21 Q. Could you turn next to Page 5 of this document,  
22 PX-412, with a Bates Stamp ending 8914. At the top it  
23 states, "introducing PerfectOffice 3.0, the perfect place to  
24 work." Can you tell us what that means, "the perfect place  
25 to work"?



1           A. Well, what it means is that users could go to  
2 PerfectOffice, click on it, turn it on, and stay there and  
3 do all of their work from that, including the office tools  
4 but also access information across the internet or access  
5 information in their company systems. So therefore it was  
6 the perfect place to work.

7           Q. The second paragraph indicates that PerfectOffice  
8 3.0 was scheduled to ship by the end of 1994. Do you recall  
9 if Novell met that goal?

10          A. Yes, we did.

11          Q. And I believe you stated it was released in late  
12 December 1994?

13          A. December 23rd. As I said, it was my Christmas  
14 present that year.

15          Q. So I would like to get the timing straight here.  
16 When did the WordPerfect Quattro Pro deals with Novell  
17 actually close?

18          A. It actually closed in June, late June, of 1994.

19          Q. And then Novell put out its first PerfectOffice  
20 Suite in December of 1994?

21          A. That is correct. The team -- we had wonderful  
22 developers. The team did an extraordinary job completing  
23 that in less than six months and provided great integration  
24 amongst these and proved the products themselves. I was  
25 very proud of that team and they had a right to be proud of

1 what they had accomplished.

2 Q. Oh by the way, had Novell delivered to the  
3 marketplace any versions of WordPerfect word processor for  
4 Windows prior to release of the PerfectOffice Suite in  
5 December of 1994?

6 A. Yes. WordPerfect 6.0A and WordPerfect 6.1 were  
7 delivered before the suite. These were enhancements to the  
8 original WordPerfect for Windows.

9 Q. A little lower on this page the document notes  
10 that the PerfectOffice 3.0 will be available in three  
11 configurations. I would like to draw your attention to the  
12 PerfectOffice Professional Model in the middle there and it  
13 states that the professional model added paradox. What was  
14 paradox?

15 A. Paradox was a relational database. It could be  
16 used by either individuals or by groups of people to store  
17 information away and then retrieve it in meaningful ways  
18 later.

19 Q. And just below paradox the document references  
20 visual app builder? What is that?

21 A. Visual app builder is a middleware product that  
22 allowed developers to develop applications and connect to --  
23 get its connections to the operating systems through  
24 AppWare. That meant that they didn't have to note as much  
25 or be as dependent on individual operating systems. It was

1 a key tool in our effort to create cross-platform  
2 applications and competition in the operating system  
3 environment.

4 Q. Now you mentioned in your answer AppWare, was  
5 visual app builder another name for AppWare?

6 A. Yes, it was.

7 Q. I would like to share with you what Microsoft's  
8 Paul Maritz said about AppWare under oath in 1994, and you  
9 will find that on the screen in front of you.

10 Mr. Maritz stated in 1994, during the time you were at  
11 Novell, that AppWare was quote, "An explicit attempt by  
12 Novell to develop a layer that will provide all of the  
13 services required by applications. And so that they are  
14 explicit in their stated goal of saying that in the future a  
15 third-party software developer should have to know only  
16 about AppWare and obtain all the services that their  
17 applications need from this AppWare sub system."

18 You agree, Mr. Frankenberg, that Mr. Maritz of  
19 Microsoft accurately described the goal of AppWare?

20 A. He described it very well.

21 Q. Why was Novell interested in having third-party  
22 developers obtain all of the services for applications  
23 needed from AppWare?

24 A. Because we saw it as important to have  
25 third-party developers not have to be dependent on

1 individual operating systems. If you want to have  
2 applications that span multiple operating environments as  
3 ours did, we needed to have it so that others could do that  
4 as well. And furthermore, it made the underlying operating  
5 system far less significant to the developer, perhaps not  
6 even at all important, and for us that matters because it  
7 gave real competition to the operating system market.

8 Q. Now the jury has heard quite a bit of testimony  
9 on the concept of middleware. And in your view, was AppWare  
10 middleware?

11 A. Yes, it was.

12 Q. Let's turn to Page 6 of this Exhibit 412 with the  
13 Bates number 8195. And it says about half way down the page  
14 "introducing PerfectFit technology." Are you familiar with  
15 the concept of shared code as it was used at WordPerfect?

16 A. Yes, I am.

17 Q. And what is shared code?

18 A. Shared code was -- is the interface to the  
19 operating environment that provides the connectivity to the  
20 engines above it and makes it so that the engines are not  
21 dependent on the under pinning operating system.

22 Q. Was PerfectFit Technology the same as shared  
23 code?

24 A. Yes, it was.

25 Q. Was PerfectFit technology in all of the

1 configurations of PerfectOffice 3.0?

2 A. Yes, it was.

3 Q. Was PerfectFit Technology a form of middleware?

4 A. Yes, it definitely was.

5 Q. Why?

6 A. Because it made it so that the developers of the  
7 applications didn't have to understand the underpinning  
8 operating systems that they ran on.

9 Q. And how, if at all, did AppWare and PerfectFit  
10 Technology fit in with your vision of networked applications  
11 and pervasive computing?

12 A. It was a central -- both of those were central to  
13 the division. If we could make it so that developers could  
14 develop applications that made use of the network and not  
15 have to understand it, could access information on different  
16 computer systems regardless of what operating system ran  
17 them, we could provide users with a far greater set of  
18 capabilities and hide the complexity of the network and the  
19 system.

20 Q. If you could turn to Page 8 of this exhibit with  
21 the Bates Stamp ending 8197, I would like to draw your  
22 attention to the third paragraph there which states in part  
23 quote, "WordPerfect is committed to deliver opendoc for  
24 Windows in the future which will provide users with  
25 distributed cross-platform support, as well as cross

1 application integration." Can you tell us what is opendoc?

2 A. Opendoc was a document standard. This was  
3 proposed as an industry standard so that one could create --  
4 an application could create documents that could be  
5 understood by other applications and thereby be able to be  
6 manipulated by multiple applications even though the  
7 developers wouldn't have worked together to make it happen.

8 Q. And was Novell involved in the development of  
9 opendoc?

10 A. Yes, we were. We were intimately involved.

11 Q. Were other companies involved in the development  
12 of opendoc?

13 A. Yes. Amongst them IBM, Apple, Lotus, several  
14 others.

15 Q. What does it mean here where it talks about  
16 cross-platform support?

17 A. Cross-platform support meant across multiple  
18 operating systems and across multiple networks. A user  
19 wouldn't have to know about that nor would the developer.

20 Q. In your view was opendoc a form of NetWare?

21 A. Yes, it was.

22 Q. During your tenure with Novell, were there any  
23 releases of opendoc technology?

24 A. Yes, there was a developer's release in -- at  
25 Brain Share in March of 1995. Developer release meaning

1 making it available to the developers to look at and try  
2 out.

3 Q. Did Novell continue to pursue opendoc technology  
4 after the sale of WordPerfect to Corel in 1996?

5 A. No, we did not. At that point we were no longer  
6 involved in application development and in document  
7 development so we stopped our involvement in opendoc.

8 Q. If you could turn to Page 11 of this Exhibit 412  
9 of Bates stamp 8200 at the end. If you could bring up the  
10 first paragraph and heading Mr. Goldberg. The heading  
11 states the first networks suite. What does that mean,  
12 Mr. Frankenberg?

13 A. What that means was that PerfectOffice was the  
14 first suite designed to work on networks. And that meant  
15 that the suite could be easily installed across the network.  
16 It could be administered across the network and ultimately  
17 the goal was to make it easy for users of PerfectOffice to  
18 make use of the network in other ways.

19 Q. At the end of this paragraph the last sentence  
20 states, "network integration will be a major focus for  
21 future PerfectOffice development." Did future PerfectOffice  
22 development include the development of PerfectOffice for  
23 Windows 95?"

24 A. Yes, it did.

25 Q. Going back again then to PerfectOffice 3.0, how

1 was PerfectOffice 3.0 received in the marketplace?

2 A. It was received very well. We got very positive  
3 reviews, um, our market share moved up into the mid  
4 twenties. We were very heartened by the response and also  
5 by the satisfaction that we heard from customers. Very,  
6 very successful launch.

7 Q. Let's turn now to Plaintiff's Exhibit 213. Take  
8 a moment to take a look at that. And first of all, do you  
9 recognize this document?

10 A. Yes, I do.

11 Q. What is it?

12 A. It is my speaker notes from a presentation  
13 demonstration that I gave at Agenda 95 in September of 1994.

14 Q. Would this document have been created in the  
15 ordinary course of Novell's business?

16 A. Yes, it would have been. As I said earlier, I  
17 frequently gave presentations and speeches.

18 Q. And can you tell us what was Agenda?

19 A. Agenda was an industry conference that, as its  
20 name implies, it was setting the agenda for the next year.  
21 It was always held in the fall. And so Windows, sorry,  
22 Agenda 95 was held in September of '94 looking forward to  
23 the next year. And people from throughout the industry  
24 would attend, press would attend, it was an invitation only  
25 kind of a conference and it was a great place for people to



1 see what was emerging in the computer market.

2 Q. If you look down in the bottom left hand corner  
3 of this document there is a date given of September 20th,  
4 1994. Would that have been the date or about the date that  
5 you gave this presentation?

6 A. Yes, it would be.

7 Q. Did Mr. Bill Gates attend this Agenda Conference?

8 A. Yes, he did. In fact, Bill attended most of the  
9 Agenda Conferences all of the ones that I attended.

10 Q. Looking at the first page on this slide three it  
11 details Novell's information services architecture and  
12 references open standards. What is meant by the term open  
13 standards?

14 A. Open standards are standards that are not owned  
15 by a particular vendor. They are often also called industry  
16 standards. These were standards that anyone could develop  
17 to with confidence that they would be there and wouldn't  
18 change and promoted inner operations of applications and  
19 systems.

20 Q. Was Novell interested in supporting open  
21 standards in the industry?

22 A. Yes, we were. It was a key tenet of Novell's.

23 Q. What value, if any, do open standards provide for  
24 competition in the computer software business?

25 A. Open standards make it possible for there to be

1 substantial competition because it is the implementation  
2 that people compete on, not the interfaces and not  
3 controlling the interfaces.

4 Q. Underneath that it gives the acronyms APIs.  
5 First of all, I think the jury knows what APIs are now, but  
6 you better, for the record, tell us what APIs are?

7 A. Application programming interface.

8 Q. And why would you be talking about APIs in this  
9 presentation?

10 A. Because having APIs, application programming  
11 interfaces that were stable and open and with equal access  
12 was key to encouraging the development of applications in  
13 the industry.

14 Q. And what do you mean when you say open and equal  
15 access?

16 A. That all comers were able to access freely and  
17 have the confidence that those interfaces would be supported  
18 in the systems that claimed to support them.

19 Q. And I would like to turn now to Plaintiff's  
20 Exhibit 222 and ask you, Mr. Frankenberg, have you seen this  
21 document before?

22 A. Yes, I have.

23 Q. The jury has already seen this document and  
24 actually heard Mr. Gates testify about it. Um, this is his  
25 reflections with respect to your speech as you see the

1 subject Frankenberg Speech at Agenda?

2 A. Right.

3 Q. And second paragraph of Mr. Gates e-mail states  
4 that Corsair was demonstrated, if you could highlight that,  
5 Mr. Goldberg, in the second -- yeah, there we go. What was  
6 Corsair?

7 A. Corsair was a shell that provided an interface,  
8 user interface, to the network and to your local  
9 applications and capabilities.

10 Q. Mr. Gates goes on to state cross-platform,  
11 including API, and then in parenthesis, Mac, Unix, Windows,  
12 et cetera, close parenthesis, can you explain to the jury  
13 what you were talking about at the Agenda Conference that  
14 may have led Mr. Gates to make that remark?

15 MR. TULCHIN: Objection to what may have led Mr. Gates  
16 to write this e-mail or say this.

17 MR. JOHNSON: I just said, Your Honor, may have led  
18 Mr. Gates.

19 MR. TULCHIN: I'm sure the witness has testified to  
20 his recollection of his speech.

21 THE COURT: I think the question goes to what the  
22 witness was talking about at the time of the speech.  
23 Overruled.

24 MR. JOHNSON: Go ahead, Mr. Frankenberg.

25 THE WITNESS: Okay. Corsair was designed, like many

1 of our products, to work on a range of systems so that users  
2 could have single user interface across platforms and the  
3 examples that I talk about were Mac, or Macintosh, Unix,  
4 Windows and other operating systems.

5 Q. (By Mr. Johnson) Mr. Gates goes on to state,  
6 again continuing in the same paragraph, multiprotocol,  
7 worldwide web, virtual world, unified views exclamation  
8 point. What did you discuss with respect to these subjects  
9 during your speech?

10 A. Um, multiprotocol refers to multiple network  
11 protocols. And at the time, there were a number of network  
12 protocols including the one that has become most popular  
13 sometimes called the IP network today. So this ran across  
14 multiple networks and their protocols. It connected to the  
15 worldwide web, one of the early connections to the worldwide  
16 web. Virtual world referred to the idea that we put forward  
17 a 3D representation of your office and of your company and  
18 outside the company so that instead of having to remember  
19 www.xyz.com, you simply pointed at the company and it gave  
20 you access to their website, if they had one, or to your  
21 file cabinet. And then it would -- you would pick up a file  
22 and that file would come up together with the application,  
23 that application or applications that could manipulate it  
24 and immediately be available for use.

25 Q. And what about Unified views?

1           A. Unified views means that regardless of the  
2           underlying systems, the user saw the same interface and the  
3           same way of looking at things. So they only had to learn  
4           one view. And after that, they didn't have to understand  
5           the underpinning systems.

6           Q. There is also a reference in Mr. Gates' e-mail to  
7           a browser called Ferret. What was Ferret?

8           A. It was aptly named. Ferret was a browser that,  
9           an early browser, that went out across the internet much  
10          like other browsers have since, and provided access to  
11          websites and capabilities on the net.

12          Q. And did you demonstrate these products at this  
13          Agenda Conference in September of 1994?

14          A. Yes, I did.

15          Q. How, if at all, did Corsair and Ferret relate to  
16          Novell's office productivity applications like WordPerfect?

17          A. Well, our plan was to include Ferret and Corsair  
18          in future versions of the PerfectOffice so that users would  
19          have this ability to go across the network, go across the  
20          systems, and make use of a single interface to a wide range  
21          of information, applications and systems.

22          Q. Mr. Gates goes on to say, and I quote, clicked on  
23          desk with financial quotes and went out and got today's  
24          stock prices on a server. Launched WP 6.1 and showed how  
25          its hypertext capability lets you navigate around the world

1 using URLs, with three exclamation points. First of all,  
2 would WP 6.1 be a reference to the WordPerfect word  
3 processor put out by Novell prior to the release of  
4 PerfectOffice 3.0?

5 A. Yes, it was.

6 Q. Can you explain to the jury what you demonstrated  
7 here with WordPerfect 6.1?

8 A. What we did, what I demonstrated was pretty  
9 astounding at the time. It is no longer astounding. But if  
10 you had a hypertext, which is indicated by something that is  
11 underlined and often it has a different color of text saying  
12 it is a link, you could click on that and go to that  
13 website. We think nothing of that today, of course you can  
14 do that. But at that point in time it was revolutionary and  
15 it even surprised Bill Gates.

16 MR. TULCHIN: Objection. Objection, Your Honor.  
17 Could we strike what surprised Mr. Gates from just reading  
18 this document.

19 THE COURT: It is struck.

20 MR. JOHNSON: Your Honor, there are three exclamation  
21 points behind this what he just described. I think --

22 THE COURT: When it comes to the appropriate time you  
23 can argue that.

24 MR. JOHNSON: Thank you, Your Honor.

25 Q. (By Mr. Johnson) By the way, were Corsair and

1 Ferret ever released as products?

2 A. No, they were not.

3 Q. Why not?

4 A. Well, NetScape Navigator was so successful as a  
5 browser that we chose to adopt it rather than Ferret. And  
6 the capabilities of Corsair were slated to be taken  
7 advantage of in the next version, the following version of  
8 PerfectOffice, and, of course, that was not released by  
9 Novell.

10 Q. Mr. Frankenberg, I would like to show you now  
11 what has been marked Plaintiff's Exhibit 1 which is an  
12 e-mail from Bill Gates to a large number of Microsoft  
13 executives.

14 It is dated October 3rd, 1994, a couple of weeks after  
15 your presentation at the Agenda Conference. Now the jury  
16 has already seen this document a number of times. Have you  
17 seen this document before?

18 A. Yes, I have.

19 Q. And when did you first see this document?

20 A. In 2009.

21 Q. And what was that in connection with?

22 A. That was in connection with my deposition for  
23 this trial.

24 Q. Do you recall your reaction upon seeing this  
25 document?

1 MR. TULCHIN: Objection, relevance.

2 THE COURT: Sustained.

3 Q. (By Mr. Johnson) Were you surprised by the  
4 contents of this document when you saw it in 2009?

5 MR. TULCHIN: Objection.

6 THE COURT: Sustained.

7 Q. (By Mr. Johnson) During your tenure at Novell,  
8 Mr. Frankenberg, did you have occasion to speak with  
9 Mr. Gates?

10 A. On a number of occasions, yes.

11 Q. Did Mr. Gates ever tell you in any of those  
12 conversations that he had decided not to publish the  
13 namespace extensions?

14 A. No, he did not.

15 Q. Did Mr. Gates ever tell you that he had decided  
16 to wait until Microsoft had a way to do a high level of  
17 integration that would be harder for the likes of Notes  
18 WordPerfect to achieve and which would give Microsoft's  
19 Office a real advantage?

20 A. No, he did not.

21 Q. Mr. Frankenberg, do you know specifically what  
22 namespace extensions are?

23 A. I know generally what they are, I don't know  
24 specifically what they are.

25 Q. Have you ever heard of the phrase undocumented



1 calls or interfaces in reference to Microsoft's operating  
2 systems products?

3 A. Yes, I have. In fact, I have used the phrase  
4 many times myself.

5 Q. What does that phrase mean as you use it?

6 A. It means interfaces, application interfaces to  
7 the operating system that were not generally available to  
8 people outside of Microsoft, developers outside of  
9 Microsoft, but were available to those inside of Microsoft.

10 Q. During the course of Novell's development of the  
11 PerfectOffice suite for Windows 95, how involved were you,  
12 if at all, with the hands on development efforts in the  
13 application -- in the business applications unit?

14 A. I was not hands on in the development.

15 Q. And can the jury safely assume that you did not  
16 actually write any code for that product?

17 A. Yes, and that is a good thing.

18 Q. So your role was not that of a developer like  
19 Mr. Harral or Mr. Richardson?

20 A. No, it was not.

21 Q. Did there come a point in time when you became  
22 aware that the business applications unit was having a  
23 problem in developing the PerfectOffice Suite to run on  
24 Windows 95?

25 A. Yes.

1 Q. And what do you recall, if anything, about those  
2 problems?

3 A. Um, the problems had to do with being denied  
4 access to interfaces that we previously had access to.

5 Q. Can you give a general time frame of when you  
6 learned about these problems?

7 A. It would have been in the first quarter of 1995.

8 Q. Do you remember who you learned this from?

9 A. Not specifically, but it would have been either  
10 Mark Calkins, who was the division manager, or Jeff Waxman  
11 who was the group manager, the applications group.

12 Q. Did you ever personally complain directly to  
13 Mr. Gates about the issue of undocumented calls and  
14 interfaces in Microsoft's operating systems?

15 A. Yes I did on a number of occasions.

16 Q. And do you recall the general time frame of these  
17 complaints?

18 A. Those would have been during 1995.

19 Q. And what did you complain about?

20 A. I complained about being denied access to  
21 application programming interfaces that people at Novell --  
22 at Microsoft had access to.

23 Q. Did you make such complaints on multiple  
24 occasions to Mr. Gates?

25 A. Yes, in person and in writing.

1 Q. And what if any reaction did Mr. Gates have to  
2 your complaints about undocumented calls and interfaces?

3 A. He refused to talk about it.

4 Q. Did he say why?

5 A. He said because when we had a meeting in early  
6 1995 that I had said that in the interest of our customers,  
7 we should put things in the past behind us. Unfortunately,  
8 undocumented interfaces continued to be an issue, so they  
9 weren't in the past. Hence, I had complained about them.

10 Q. Did there come a point in time when you stopped  
11 raising the issue of undocumented calls and interfaces with  
12 Mr. Gates?

13 A. Yes, there was.

14 Q. And when did you stop raising those issues?

15 A. Probably late summer of 1995.

16 Q. Why did you stop raising the issues of  
17 undocumented calls and the interfaces?

18 A. Because Bill refused to address that issue and we  
19 had other issues that were vitally important to Novell that  
20 we needed to make progress on. And, um, so I turned my  
21 attention to those issues.

22 Q. Was Novell dependent in any way upon Microsoft's  
23 cooperation in other aspects of its business at the time?

24 A. Yes, we were intimately dependent on Microsoft's  
25 cooperation.

1 Q. Can you explain that a bit to the jury?

2 A. Yes. Um, Novell's largest product, as I think we  
3 talked about a little while ago, was NetWare. And NetWare  
4 relied on having a client, software on the -- that worked in  
5 conjunction with Microsoft's operating system to access our  
6 servers. If we didn't have Microsoft's cooperation on that,  
7 our flagship product wouldn't work properly. And as such,  
8 it was important that we have Microsoft's cooperation in  
9 those areas amongst others.

10 Q. Do you recall that at some point Novell reached a  
11 decision to sell the business applications?

12 A. Yes, I do.

13 Q. And when was that, if you recall?

14 A. That would have been in late October of 1995.

15 Q. So that would have been after the release of  
16 Windows 95 by Microsoft in August?

17 A. That is correct.

18 Q. What applications did Novell plan on selling?

19 A. Planned on selling the WordPerfect, Quattro Pro,  
20 WordPerfect Presentations, all of those except for -- all of  
21 those included in the standard suite except for GroupWise.

22 Q. And what was GroupWise?

23 A. GroupWise was a GroupWare product that allowed --  
24 that provided a number of capabilities including e-mail,  
25 group calendaring, scheduling, and group access to the

1 information.

2 Q. Microsoft has a damages expert in this case as do  
3 we. Um, and he filed a report which I know you haven't  
4 seen. But I want to read you something Microsoft's damages  
5 expert said about you in his report. I'm referencing the  
6 Hubbard report Paragraph 112. Quote, "Mr. Frankenberg also  
7 testified that the value of the GroupWise assets was  
8 approximately half of the value of the word processing and  
9 spreadsheet application assets in March of 1994." Um, did  
10 you ever say that, Mr. Frankenberg?

11 A. No, I did not.

12 Q. Now, March of 1994, would that have been the time  
13 that Novell entered into its agreement to buy WordPerfect?

14 A. Yes, it was.

15 Q. Do you recall the total revenues of GroupWise, of  
16 the GroupWise assets in 1993 prior to Novell's purchase?

17 A. It would have been approximately \$25,000,000.

18 Q. And what were the total revenues of WordPerfect  
19 Corporation in 1993 prior to that purchase?

20 A. Approximately \$700,000,000.

21 Q. So if you're actually trying to put a monetary  
22 value on GroupWise at the time of the purchase in 1994, what  
23 fraction of the total value of the WordPerfect assets was  
24 attributable to GroupWise?

25 A. From a revenue standpoint about four percent.

1           Q.   Now you testified in your deposition in this case  
2           that at the time of the sale moving forward to 1996, on a  
3           going forward basis, GroupWise held the most promise for  
4           you. Do you remember that testimony?

5           A.   Yes, I do.

6           Q.   And why did you think that?

7           A.   Well, because GroupWise was inherently a network  
8           application. It provided us with a much more open field to  
9           compete than the -- than in office suites, and I saw that as  
10          a great opportunity for Novell.

11          Q.   What, if anything, had happened to the value of  
12          the other products besides GroupWise?

13          A.   They had declined significantly.

14          Q.   Why?

15          A.   Because Microsoft delayed our introduction and  
16          their suite was there at the day of announcement, Windows 95  
17          and ours was not.

18          Q.   Let's return to the sale of the office  
19          productivity applications. Um, can you explain to the jury  
20          why Novell decided to sell its office productivity  
21          applications in late 1995?

22          A.   It became clear that we were not competing on a  
23          level playing field. Um, our key competitor, Microsoft,  
24          could control our ability to put product out the door and  
25          did so. And that meant that it was impossible for us to

1 fulfill our promises to customers, it was impossible for us  
2 to derive significant value, and it made much more sense for  
3 us to sell product and pursue other opportunities.

4 Q. In the absence of the reasons you just described  
5 and the decision to sell, do you believe Novell would have  
6 continued to own and develop WordPerfect and the other  
7 business applications?

8 MR. TULCHIN: Objection relevance.

9 THE COURT: Sustained.

10 Q. (By Mr. Johnson) Um, can you describe for the  
11 jury how Novell went about selling the business  
12 applications?

13 A. Yes. We generated a list of potential buyers and  
14 we announced to the world that we were planning on selling  
15 the applications, gave a date by which bids would be  
16 received, received those bids, contacted everyone on our  
17 list and discussed the opportunity with them and then chose  
18 to sell it to Corel.

19 Q. When you announced the sale, you made it public  
20 that you were looking to sell these applications, did Novell  
21 have a buyer?

22 A. No, we did not.

23 Q. Why did Novell announce the sale without having a  
24 buyer in hand?

25 A. To make sure that we reached everyone who might

1 be interested in buying it.

2 Q. And in your view, did that help or hurt Novell's  
3 ability to sell the business applications?

4 A. It helped immensely. As it turned out, Corel,  
5 who ultimately did buy the applications, was not on our list  
6 of people to contact. So had we not made this announcement,  
7 the best bid in our, ultimately in our view, wouldn't have  
8 been made.

9 Q. During the time period between the decision to  
10 sell the business applications and the actual sale to Corel,  
11 were there any changes in Novell's support to the business  
12 applications units efforts to get out a PerfectOffice suite  
13 for Windows 95?

14 A. No, there were not any changes. It would have  
15 been foolish of us to do that because the buyer then would  
16 have suffered, potential buyers would have looked at that  
17 and said that we were decreasing the value by not continuing  
18 to do the development.

19 MR. JOHNSON: Thank you, Mr. Frankenberg. No further  
20 questions.

21 THE COURT: Perfect timing. Let's take a recess and  
22 I'm ready any time anybody else is.

23 (Recess.)

24

25